

**From:** "Gary Ryan" <gary@airportbrokers.com>  
**To:** <Secretary@fmc.gov>  
**Date:** 9/28/04 1:27PM  
**Subject:** Comments on NVOCC Rate Filing & Service Contracts

Dear Federal Maritime Commission:

Enclosed please note comments from Airport Brokers Corporation on the FMC's requirement for NVOCC rate filing and on service contracts. We respectfully request they become part of the records.

Thank you.

Best regards,

AIRPORT BROKERS CORPORATION

Gary A. Ryan  
President  
Phone: (206) 246-6580  
Direct Line: (206) 957-6480  
Fax: (206) 242-7410  
Email: gary@airportbrokers.com

**CC:** "Edward D. Greenberg" <egreenbe@gkgLaw.com>,  
[staff@ncbfaa.org](mailto:staff@ncbfaa.org)



September 15, 2004

Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington DC 20573-0001

Re: **Supplemental Views on Petitions Filed Numbers P3-03 & Petition No. P5-03,  
P7-03, P8-03, P9-03, P1-04 and P4-04**

Gentlemen:

On August 29, 2003 we wrote the Federal Maritime Commission outlining our view on petitions filed by the National Customs Brokers & Freight Forwarders Association of America, Inc. (NCBFAA) and by United Parcel Service (UPS). In that numerous parties have submitted supplemental petitions and information to the FMC, we respectfully request that our supplemental views be considered as well.

Prior to the late 1970s, the airlines and the airfreight consolidators were heavily governed by the CAB and FAA with regard to airfreight rates they could offer each other and the public. For the most part, until airline deregulation, airfreight forwarders had to offer the shipping public the IATA (International Air Transport Association) rates. Airfreight forwarders made money on the 5% commissions they were paid by the airlines. In 1978 Congress passed the Airline Deregulation Act which allowed supply and demand and the shipper's ability to shop rates to set airfreight rates. Since that time, the U.S. airfreight industry has flourished. U.S. shippers and overseas buyers are getting dramatically lower rates and service levels have improved.

#### **NVOCC Tariff Filing – A Value to the Public?**

Until a couple of years ago, the FMC required NVOCCs file their ocean freight rates and tariffs with the FMC. The rates filed directly with the FMC they were open to the public. Then, the rules changed to allow the NVOCCs to file their rates on the Internet.

#### ***AIRPORT BROKERS CORPORATION***

P.O. Box 68668, Seattle, Washington 98168  
17730 Ambaum Blvd. S., Seattle, WA 98148, USA  
Telephone: (206) 246-6580 Fax: (206) 242-7410  
E-mail: [abcsea@airportbrokers.com](mailto:abcsea@airportbrokers.com) [www.airportbrokers.com](http://www.airportbrokers.com)  
Customs Brokers License No. 5826 – IATA No. 01-1-0278  
Federal Maritime License No. 2497

Under the current system, unless a shipper, freight forwarder, consignee or other interested party knows that the Federal Maritime Commission has a link to each NVOCC's tariff at the FMC's web site, NVOCC tariffs are impossible to find. We would ask anyone to try putting key words into Google, Excite or one of the other Internet search engines to try to find an NVOCC's tariff and rates on the Internet. We tried the names of various NVOCCs along with words like "tariff" and "rates" and were unable to find anything meaningful. We finally gave up on using a search engine and went to the FMC's cross reference.

When you do find the NVOCC's tariff, try to access it. We tried to access FedEx Supply Chain Services tariff at [www.etmrates.com](http://www.etmrates.com). The tariff could not be accessed without a user name and password. There was nowhere on the site where someone could apply for a user name and password and there was no listing of costs. In other words, the tariff was inaccessible. Etmrates, by the way, hosts a lot of other tariffs that are all equally inaccessible.

The Danzas Corporation NVOCC tariff is located at [www.RateWave.com](http://www.RateWave.com). While you can go to that web site, you can not view the tariff. Their tariff is password protected and the viewer has no way of obtaining permission, even if they are willing to pay a fee to see the tariff. RateWave houses other NVOCC tariffs on their site that also can not be viewed.

Expeditors International's tariff can be viewed for a flat fee of \$500.00 a year. This is quite a bit to a shipper or consignee that wants to check a rate to see they were invoiced correctly or overcharged.

The report can go on and on; but, the bottom line is that no shipper, consignee or freight forwarder can view or research ocean freight rates under the current system because the rates are either unavailable, or available at such a high cost, that no one would view them. No shipper or consignee should not have to pay \$500 to view an NVOCC's tariff to see if they were overcharged.

On top of this, many NVOCCs do not even file their rates. We had an informal docket complaint (1846(I)) filed with the FMC against Gelders Spectra Shipping, a European NVOCC. At the conclusion of the docket, Gelders Spectra wrote to the FMC complaining that they could not see why the FMC found against them in the action. Gelder Lines wrote the FMC on April 16, 2003 saying, "It is unclear to me what you and/or Mr. Ryan are trying to achieve, we never filed any local charges in whatever port in the United States."

The FMC just does not have the staff required to police the rates charged on bills of lading and research whether the rates have been filed in the NVOCC's tariff.

Unless the rate portion of the NVOCC tariffs are freely open to the public free of charge, and unless the FMC can get enough auditors to police rates and tariff rates filed, the system simply will not work and it certainly offers only limited protection to the shipping public.

It is clear that shippers can not shop ocean freight rates because they can not see the rates filed. Neither are the ocean freight rates available to shippers to verify rates they were charged. **Because of this, the filing of NVOCC freight rates does not serve any public interest.**

### **Service Contracts – Will They Serve a Purpose?**

We have seen service contracts being used by various parties. The one thing service contracts have in common is that vendors that have clients sign service contracts do not want to loose, or upset, the clients. Therefore, so the service contracts signed are continually renegotiated to avoid penalties under the contract. Any vendor that enforces a service contract on a client is sure to loose the client and the client will never use that vendor again.

If a shipper can not meet the volume requirement specified in the service contract, the carrier simply "rolls" the unfulfilled volume into a new contract.

If costs go up and the carrier can not meet the prices specified in the contract, the carrier will either add a surcharge (if surcharges are not expressly provided for in the service contract) or simply tell the shipper that the vessels do not have space allocations for the rates outlined in the service contract, causing the service contract to be renegotiated.

The cost of enforcing a service contract is expensive. Legal fees for both sides of the service contract risk huge legal fees if forced settlement is required. Because of this, very few service contracts, if any, are ever taken to court when they are breached.

Service contracts cost the public more money because shippers need to have their legal departments review them prior to signing. Most shippers will want to have changes made to wording in the service contract; thus, each service contract will end up being different and, probably, expensive. These costs just raise the expense of ocean shipping.

Unlike filed rates, other shippers and other carriers can not see the confidential service contract rates to determine where market rate levels should be set or are being set. Shippers can not determine what rates and terms of service they should be asking for from the carriers.

In the end, we believe that Service Contracts, if required, will become Memorandums of Understanding, will carry little weight and be of very limited value. The Service Contracts will be altered, amended and the quantities and rates required to fulfill the contracts minimized to the extent that they might as well be non-existent. And, as with rate filing, the FMC does not have the staff to review and police service contracts to make sure they exist and are being followed.

**Conclusions:**

**In that the ocean freight rates filed by NVOCCs on the Internet are not freely available to the public and, if found and paid for, only offer a very limited service to the shipping public, we believe that the Federal Maritime Commission should deregulate the requirement for NVOCCs to file their ocean freight rates.**

**As for service contracts, in that service contracts are not enforced and, at best, only serve as memorandums of understanding between the carrier and the shipper, we believe that service contracts serve no value to the general public; therefore, we believe that any thoughts of requiring service contracts in lieu of filed rates be dismissed.**

**We believe that shippers and carriers, for their own business reasons, will adopt proposals, offers and acceptances that will serve the same purpose as filed rates and service contracts. These agreed upon rates will protect both parties, be enforced by the courts and not need the intervention of the Federal Maritime Commission.**

Very truly yours,  
AIRPORT BROKERS CORPORATION

Gary A. Ryan  
President